

REMARKS

In response to the Restriction Requirement dated September 13, 2006, Applicants have elected Group II, claims 16-93, for examination at this time without traverse. Accordingly, Applicants have canceled claims 1-15 without prejudice to the filing of any divisional, continuation, or continuation-in-part application. Applicants note that the Examiner has not indicated the status of dependent claim 93, but have assumed for the purposes of this response that dependent claim 93 is grouped with independent claim 91 from which it depends.

The Examiner has also required election of one of 36 asserted species of the claims 16-93 of Group II. Applicants have selected Species (6), claims 16, 21, 24, 28, 85-92, and (presumably) 93 for current prosecution on the merits, with traverse. Accordingly, Applicants have provisionally withdrawn claims 17-20, 22-23, 25-27 and 29-84 without prejudice to the filing of any divisional, continuation, or continuation-in-part application, and without prejudice to rejoining the withdrawn claims upon allowance of a generic claim or upon withdrawal of the requirement for the election of the species.

Thus, claims 16, 21, 24, 28 and 85-93 are currently pending, and claims 17-20, 22-23, 25-27 and 29-84 are currently withdrawn.

As noted above, the selection of Species (6) is made with traverse. In particular, Applicants believe that the separation of the claims of Group II into multiple species for the purposes of examination is improper. One reason that this separation into multiple species is improper is that MPEP § 803 states that "[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." The Examiner has not established that a serious burden exists with respect to examining together the claims of Group II, particularly when all of the claims of the 36 asserted species depend from a single independent claim (that being claim 16). With respect to establishing a serious burden, MPEP § 808.02 explains that

the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus the examiner must show by appropriate explanation one of the

following: (A) Separate classification thereof: . . . (B) A separate status in the art when they are classifiable together: . . . (C) A different field of search: . . .

MPEP § 808.02 (emphasis added).

With respect to the 36 asserted species of the claims of Group II, the Examiner has not established any of these three factors to support the limiting of the examination to a single species.

Instead, the Examiner has merely asserted without further support that the 36 asserted species “do not overlap in scope” to justify the separation of the claims into the 36 asserted species. (Restriction Requirement Office Action dated 09/13/06, page 11.) However, MPEP § 806.04(f) explains that a lack of overlap in scope of species corresponds to the species being mutually exclusive without any common claim elements. Since all of the dependent claims of claim 16 share at least the claim elements of independent claim 16, they do overlap in scope at least to the extent of those claim elements of independent claim 16.

Accordingly, since the Examiner has not established that a serious burden exists with respect to examining together the claims of Group II, and since all of the claims of the 36 species overlap in scope at least to the extent of the claim elements of independent claim 16, Applicants request that the separation of the claims of Group II into multiple species be withdrawn.

If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (206) 694-4815.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,
SEED Intellectual Property Law Group PLLC

/James A. D. White/

James A. D. White
Registration No. 43,985

JDW:jaa

701 Fifth Avenue, Suite 5400
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031
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